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10/657,679

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Edouard Serras

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EXAMINER

HUSON, MONICA ANNE

ART UNIT

PAPER NUMBER

1791

MAIL DATE

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04/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/657,679

Applicant(s)

SERRAS ET AL.

Examiner

Monica A. Huson

Art Unit

1791

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6, 8-15 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6, 8-15 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to the Amendment filed 29 January 2008.

Claim Objections

Claim 12 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 18, 6, and 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Revord (USPN 3809566), in view of Klus (U.S. Patent 6,340,389), Brouard (USPN 5507996), further in view of Randel (USPN 1901051). **As to Claim 18**, Revord teaches a method for manufacturing a building element based on plaster (plaster is gypsum, 1:10-15), comprising preparing a mixture (1:41-45) of plaster, water and filler (vermiculite, 6:28-50), placing said mixture in a mold (3:45-50), compressing the mixture in the mold by first applying a packing pressure and then applying a higher pressure to the mixture to obtain the building element (3:45-50, the article is inherently capable of being used as a building element), wherein the amount of pressure applied to the mixture in the mold and the quantity of water in the mixture are sufficiently high to prevent the plaster crystallization under pressure in the mixture (3:28-48, “then sets” in 3:29, which indicates it was not set or crystallized prior), and then unmolding the building element and allowing the plaster in the mixture to crystallize outside the mold (3:28-34, “then sets” in 3:29). Revord teaches the conventionality of using 40 to 70 cc water (1 cc water = 1 gram) for 100 parts by weight of plaster or gypsum (1:64-69).

Revord is silent to the claimed 30 to 45 seconds. Klus shows that it is known to carry out a method wherein the mixture is compressed in the mold during 30 to 45 seconds (Column 7, lines 56-67). It would have been prima facie obvious to one of ordinary skill in the art at the

time the invention was made to use Klus' compression time during Revord's molding process in order to obtain the desired amount of compression in the final article.

Revord does not show the claimed composition. Brouard's mixture meets or suggests the claimed amounts (5:25-30). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Brouard's composition as that of Revord's process in order to obtain the final article having a particular composition and relative characteristics.

As to Claim 18 and 12, Revord shows the process as claimed as discussed in the rejection of Claim 18 above, but he does not show a specific pressure. Randel's pressure suggests the claimed pressure, and although Revord appears to be silent to a temperature, the Examiner submits that the claimed temperature reads on room temperature, and therefore would have been prima facie obvious when combined with Randel's pressure.

As to Claim 6, Revord shows the process as claimed as discussed in the rejection of Claim 18 above, but he does not necessarily teach a two-step pressing process to reduce voids. However a two-step process would have been obvious over Brouard's teachings at 5:57-28.

As to Claim 8, Revord's vermiculite (6:28-50) is inherently chemically inert with respect to the gypsum.

2. **Claim 9-12 and 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Revord and Klus, further in view of Dailey (USPN 2571343). Revord and Klus teach the subject matter of Claim 18 above under 35 USC 103(a). **As to Claim 9**, Revord and Klus appear to be silent to a filler that is not inert with respect to the plaster. However, Dailey teaches organic fillers such as paper fiber, wood flour, hemp, and starch (1:30-38), and the Examiner takes the position that these substances would be at least partially "not chemically inert" with respect to the plaster. Dailey additionally teaches soluble potassium salts in order to control setting expansion (6:50-52), which also constitutes a filler that is "not chemically inert" with respect to the plaster. It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Dailey into that of Revord and Klus in order to produce a dense, strong and tough cast (4:45-50) because of its reinforcement (1:36) requiring no drying (4:24-35). **As to Claims 10 and 11**, Dailey teaches the beneficial aspects of melamine (2:20-25). It would have been further prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Dailey's method in order to provide "the very desirable characteristic of decreasing the amount of water required to be mixed with the alpha gypsum to produce a mix of pourable of fluid consistency." (2:15-19). **As to Claim 12**, Dailey teaches that temperature is a result effective variable (2:34-43). See MPEP 2144.05 II

and *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Additionally, because 15 to 20 degrees C is approximately room temperature, the particular conditions would have been prima facie obvious. **As to Claim 14**, Dailey teaches the beneficial aspects of melamine (2:20-25). It would have been further prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Dailey's method in order to provide "the very desirable characteristic of decreasing the amount of water required to be mixed with the alpha gypsum to produce a mix of pourable of fluid consistency." (2:15-19).

3. **Claims 13 and 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Revord and Klus, further in view of Jagdmann (USPN 1925050). Revord and Klus teach the subject matter of Claim 18 above under 35 USC 103(a). **As to Claims 13 and 15**, Revord shows the process as claimed as discussed in the rejection of Claim 18 above, but he does not show driving an element into the mold. Jagdmann teaches driving at least one element with a reduced cross section into the mixture in the mold and guiding and driving a rod axially in translation into the mixture (Page 1, lines 40-45, also see Page 4, lines 70-92 and Figs. 7 and 8). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Jagdmann into that of Revord and Klus in order to provide a more uniform size and density (Page 1, lines 1-55).

Response to Arguments

Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant contends that Revord cannot be relied upon for teaching preventing plasticization until the material is out of the mold. Applicant goes on to say that "plasticization begins as soon as the plaster is in contact with the water and that it is not possible to stop this crystallization." These arguments are not persuasive because Revord does indicate that the claimed conditions at 3:28-48, "then sets" in 3:29, which indicates it was not set or crystallized prior), and then unmolding the building element and allowing the plaster in the mixture to crystallize outside the mold (3:28-34, "then sets" in 3:29). Further, it is noted that if it is applicant's position that the plasticization process is impossible to stop once the plaster contacts the water, it is unclear how applicant's invention is adequately disclosed as operational.

In response to applicant's arguments against Randel individually, one cannot show nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant contends that Klus, Revord, Brouard, and Randel do not suggest the invention. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica A. Huson whose telephone number is 571-272-1198. The examiner can normally be reached on Monday-Friday 7:00am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1791

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Monica A Huson
Primary Examiner
Art Unit 1791

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